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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/830,242	04/24/2001	Soren Vindriis	CU-2508RJS	3307

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EXAMINER

ARNOLD III, TROY G

ART UNIT	PAPER NUMBER
3728	

DATE MAILED: 09/03/2003

12

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	09/830,242	VINDRIIS, SOREN	
	Examiner	Art Unit	
	Troy Arnold	3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 15 July 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-6 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ . | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hutcheson in view of Ogden and Singh. Hutcheson teaches all the limitations of claim 1 except the fabric being at least partially impregnated in the plastic foil such that the fabric penetrates below an exterior surface of the foil. (See the embodiment in Fig 11, described in column 5, beginning line 18). Ogden teaches an insole construction in which a portion 46 of a non-woven fabric layer 22 is coated or covered with a liquid barrier layer, which then cools to become solid. See column 12 lines 66-67 and column 13, lines 1-15. Although the molten barrier layer 62 does not penetrate all the way through the non-woven layer 22B, some portion of it, 46, will be coated with the barrier layer 62, which means that it will be partially enclosed in it. Further, in column 13 line 3, Ogden discusses "heat bonding" which implies at least the partial enclosure of one layer in the other, given the relative softness, required thickness and low melting point of the materials used. Singh teaches impregnating fabric into latex binder material. It would have been obvious in view of Ogden and Singh to one of ordinary skill in the art at the time the invention was made to partially enclose the fabric layers 56 and 58 in the foil

layers 12 and 14 of Hutcheson, by melting, for the purpose of ensuring that they are better retained against relative movement. Regarding claim 2, Hutcheson as modified regarding claim 1 teaches all the limitations except one or more of the materials specified for the outer coverings 56,58 of the invention of Hutcheson will have a coefficient of friction ratio as claimed. See also the Abstract and Specification where the coefficient of friction of the top layer may be varied to suit different applications.

Regarding claim 3, Hutcheson teaches the top plastic layer covered with fabric such as cotton or synthetic material. As regarding claim 2, a variety of coefficients of friction will be covered by the material specified by Hutcheson in column 5, lines 23-28, thus satisfying the limitations of the claim. Hutcheson teaches all the limitations of claim 4 except the fabric having a higher tensile strength than the top plastic layer. In view of the various materials suggested by Hutcheson in column 5, lines 43-48, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the tensile strength of the fabric material higher than that of the plastic layer for the purpose of ensuring that the fabric adequately protected the plastic layer against rupture. This is clearly well within the capability of one of ordinary skill in the art.

Hutcheson teaches all the limitations of claim 5 except the top fabric layer being impregnated with fungicide. Ogden teaches a barrier layer being impregnated with antimicrobial material with fungistatic properties. It would have been obvious in view of Ogden to one of ordinary skill in the art at the time the invention was made to incorporate fungicide into the top material layer of Hutcheson for the purpose of improving the sanitary environment of the foot. See also Hutcheson, column 5, lines 33-

37 where he discusses additive substances. Regarding claim 6, it would have been obvious to one of ordinary skill in the art at the time the invention was made to assemble the insole of Hutcheson as modified above, in the manner claimed. There is nothing unobvious about the procedure claimed. Furthermore, pressing the fabric covering of Hutcheson into the plastic foils will naturally impregnate the fabric into the foil at least to some degree such that the fabric penetrates below an exterior surface of the foil, again at least to some degree.

Response to Arguments

Applicant's arguments have been carefully considered but are not persuasive. Contrary to the remarks on page 2, there was no agreement or understanding that the heat bonding and joining methods described by Ogden *do not* include impregnation of fabric in the plastic such that the fabric penetrates below an exterior surface of the plastic (foil). It is submitted that the combination of references above still teaches the distinct structural limitations claimed in the claims. The Singh reference is added to the rejection to further show the well-known nature of impregnating fabric into softened plastic materials.

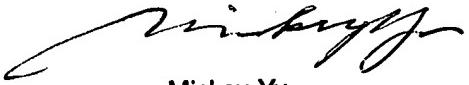
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Troy Arnold whose telephone number is 703-305-0621. The examiner can normally be reached on Tuesday-Thursday, 9:30-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 703-308-2672. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-0302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

Troy Arnold
Examiner
Art Unit 3728

TGA
August 19, 2003



Mickey Yu
Supervisory Patent Examiner
Group 3700